

**ASSEMBLY BILL**

**No. 221**

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**Introduced by Assembly Member Gray**

January 25, 2017

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An act to amend Sections 4600, 4903.1, and 5005 of the Labor Code, relating to workers' compensation.

LEGISLATIVE COUNSEL'S DIGEST

AB 221, as introduced, Gray. Workers' compensation: liability for payment.

Existing law establishes a workers' compensation system, administered by the Administrative Director of the Division of Workers' Compensation, that generally requires employers to secure the payment of workers' compensation for injuries incurred by their employees that arise out of, or in the course of, employment. Existing law requires an employer to provide all medical services reasonably required to cure or relieve the injured worker from the effects of the injury.

This bill would provide that for claims of occupational disease or cumulative injury filed on or after January 1, 2018, the employee and the employer would have no liability for payment for medical treatment unless one or more of certain conditions are satisfied, including, among others, that the treatment was authorized by the employer.

Existing law authorizes the Workers' Compensation Appeals Board to determine, and allow as a lien against any sum to be paid as compensation, certain expenses.

This bill would provide that for claims of occupational disease or cumulative injury filed on or after January 1, 2018, the employer shall not be liable for the payment of any lien for medical treatment unless one of the conditions described above is satisfied, or the parties agree

to a settlement by compromise and release and the amount of the compromise and release, exclusive of the cost of medical treatment, is \$25,000 or more.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4600 of the Labor Code is amended to  
2 read:

3 4600. (a) Medical, surgical, chiropractic, acupuncture, and  
4 hospital treatment, including nursing, medicines, medical and  
5 surgical supplies, crutches, and apparatuses, including orthotic and  
6 prosthetic devices and services, that is reasonably required to cure  
7 or relieve the injured worker from the effects of his or her injury  
8 shall be provided by the employer. In the case of his or her neglect  
9 or refusal reasonably to do so, the employer is liable for the  
10 reasonable expense incurred by or on behalf of the employee in  
11 providing treatment.

12 (b) As used in this division and notwithstanding any other law,  
13 medical treatment that is reasonably required to cure or relieve the  
14 injured worker from the effects of his or her injury means treatment  
15 that is based upon the guidelines adopted by the administrative  
16 director pursuant to Section 5307.27.

17 (c) Unless the employer or the employer's insurer has  
18 established or contracted with a medical provider network as  
19 provided for in Section 4616, after 30 days from the date the injury  
20 is reported, the employee may be treated by a physician of his or  
21 her own choice or at a facility of his or her own choice within a  
22 reasonable geographic area. A chiropractor shall not be a treating  
23 physician after the employee has received the maximum number  
24 of chiropractic visits allowed by subdivision (c) of Section 4604.5.

25 (d) (1) If an employee has notified his or her employer in  
26 writing prior to the date of injury that he or she has a personal  
27 physician, the employee shall have the right to be treated by that  
28 physician from the date of injury if the employee has health care  
29 coverage for nonoccupational injuries or illnesses on the date of  
30 injury in a plan, policy, or fund as described in subdivisions (b),  
31 (c), and (d) of Section 4616.7.

1 (2) For purposes of paragraph (1), a personal physician shall  
2 meet all of the following conditions:

3 (A) Be the employee's regular physician and surgeon, licensed  
4 pursuant to Chapter 5 (commencing with Section 2000) of Division  
5 2 of the Business and Professions Code.

6 (B) Be the employee's primary care physician and has  
7 previously directed the medical treatment of the employee, and  
8 who retains the employee's medical records, including his or her  
9 medical history. "Personal physician" includes a medical group,  
10 if the medical group is a single corporation or partnership  
11 composed of licensed doctors of medicine or osteopathy, which  
12 operates an integrated multispecialty medical group providing  
13 comprehensive medical services predominantly for  
14 nonoccupational illnesses and injuries.

15 (C) The physician agrees to be predesignated.

16 (3) If the employee has health care coverage for nonoccupational  
17 injuries or illnesses on the date of injury in a health care service  
18 plan licensed pursuant to Chapter 2.2 (commencing with Section  
19 1340) of Division 2 of the Health and Safety Code, and the  
20 employer is notified pursuant to paragraph (1), all medical  
21 treatment, utilization review of medical treatment, access to  
22 medical treatment, and other medical treatment issues shall be  
23 governed by Chapter 2.2 (commencing with Section 1340) of  
24 Division 2 of the Health and Safety Code. Disputes regarding the  
25 provision of medical treatment shall be resolved pursuant to Article  
26 5.55 (commencing with Section 1374.30) of Chapter 2.2 of  
27 Division 2 of the Health and Safety Code.

28 (4) If the employee has health care coverage for nonoccupational  
29 injuries or illnesses on the date of injury in a group health insurance  
30 policy as described in Section 4616.7, all medical treatment,  
31 utilization review of medical treatment, access to medical  
32 treatment, and other medical treatment issues shall be governed  
33 by the applicable provisions of the Insurance Code.

34 (5) The insurer may require prior authorization of any  
35 nonemergency treatment or diagnostic service and may conduct  
36 reasonably necessary utilization review pursuant to Section 4610.

37 (6) An employee shall be entitled to all medically appropriate  
38 referrals by the personal physician to other physicians or medical  
39 providers within the nonoccupational health care plan. An  
40 employee shall be entitled to treatment by physicians or other

1 medical providers outside of the nonoccupational health care plan  
2 pursuant to standards established in Article 5 (commencing with  
3 Section 1367) of Chapter 2.2 of Division 2 of the Health and Safety  
4 Code.

5 (e) (1) When at the request of the employer, the employer's  
6 insurer, the administrative director, the appeals board, or a workers'  
7 compensation administrative law judge, the employee submits to  
8 examination by a physician, he or she shall be entitled to receive,  
9 in addition to all other benefits herein provided, all reasonable  
10 expenses of transportation, meals, and lodging incident to reporting  
11 for the examination, together with one day of temporary disability  
12 indemnity for each day of wages lost in submitting to the  
13 examination.

14 (2) Regardless of the date of injury, "reasonable expenses of  
15 transportation" includes mileage fees from the employee's home  
16 to the place of the examination and back at the rate of twenty-one  
17 cents (\$0.21) a mile or the mileage rate adopted by the Director  
18 of Human Resources pursuant to Section 19820 of the Government  
19 Code, whichever is higher, plus any bridge tolls. The mileage and  
20 tolls shall be paid to the employee at the time he or she is given  
21 notification of the time and place of the examination.

22 (f) When at the request of the employer, the employer's insurer,  
23 the administrative director, the appeals board, or a workers'  
24 compensation administrative law judge, an employee submits to  
25 examination by a physician and the employee does not proficiently  
26 speak or understand the English language, he or she shall be  
27 entitled to the services of a qualified interpreter in accordance with  
28 conditions and a fee schedule prescribed by the administrative  
29 director. These services shall be provided by the employer. For  
30 purposes of this section, "qualified interpreter" means a language  
31 interpreter certified, or deemed certified, pursuant to Article 8  
32 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of  
33 Division 3 of Title 2 of, or Section 68566 of, the Government  
34 Code.

35 (g) If the injured employee cannot effectively communicate  
36 with his or her treating physician because he or she cannot  
37 proficiently speak or understand the English language, the injured  
38 employee is entitled to the services of a qualified interpreter during  
39 medical treatment appointments. To be a qualified interpreter for  
40 purposes of medical treatment appointments, an interpreter is not

1 required to meet the requirements of subdivision (f), but shall meet  
2 any requirements established by rule by the administrative director  
3 that are substantially similar to the requirements set forth in Section  
4 1367.04 of the Health and Safety Code. The administrative director  
5 shall adopt a fee schedule for qualified interpreter fees in  
6 accordance with this section. Upon request of the injured employee,  
7 the employer or insurance carrier shall pay for interpreter services.  
8 An employer shall not be required to pay for the services of an  
9 interpreter who is not certified or is provisionally certified by the  
10 person conducting the medical treatment or examination unless  
11 either the employer consents in advance to the selection of the  
12 individual who provides the interpreting service or the injured  
13 worker requires interpreting service in a language other than the  
14 languages designated pursuant to Section 11435.40 of the  
15 Government Code.

16 (h) Home health care services shall be provided as medical  
17 treatment only if reasonably required to cure or relieve the injured  
18 employee from the effects of his or her injury and prescribed by  
19 a physician and surgeon licensed pursuant to Chapter 5  
20 (commencing with Section 2000) of Division 2 of the Business  
21 and Professions Code, and subject to Section 5307.1 or ~~5703.8~~  
22 5307.8. The employer shall not be liable for home health care  
23 services that are provided more than 14 days prior to the date of  
24 the employer's receipt of the physician's prescription.

25 (i) *For claims of occupational disease or cumulative injury filed*  
26 *on or after January 1, 2018, the employee shall have no liability*  
27 *for payment for medical treatment and the employer shall have no*  
28 *liability for payment for medical treatment unless one or more of*  
29 *the following has occurred:*

- 30 (1) *The treatment was authorized by the employer.*
- 31 (2) *The injury to the body part or body parts for which the*  
32 *treatment was provided has been accepted by the employer.*
- 33 (3) *The appeals board, after an evidentiary hearing or*  
34 *stipulation of the parties, finds the injury to the body part or body*  
35 *parts for which the treatment was provided was compensable.*
- 36 (4) *The employee has undergone an evaluation by a qualified*  
37 *medical examiner, pursuant to Section 4600, or an agreed medical*  
38 *examiner and the evaluating physician has determined that the*  
39 *claimed occupational disease or cumulative injury was caused, in*  
40 *whole or in part, by the employment.*

1 SEC. 2. Section 4903.1 of the Labor Code is amended to read:

2 4903.1. (a) The appeals board or arbitrator, before issuing an  
3 award or approval of any compromise of claim, shall determine,  
4 on the basis of liens filed with it pursuant to Section 4903.05,  
5 whether any benefits have been paid or services provided by a  
6 health care provider, a health care service plan, a group disability  
7 policy, including a loss-of-income policy or a self-insured  
8 employee welfare benefit plan, and its award or approval shall  
9 provide for reimbursement for benefits paid or services provided  
10 under these plans as follows:

11 (1) If the appeals board issues an award finding that an injury  
12 or illness arises out of and in the course of employment, but denies  
13 the applicant reimbursement for self-procured medical costs solely  
14 because of lack of notice to the applicant's employer of his or her  
15 need for hospital, surgical, or medical care, the appeals board shall  
16 nevertheless award a lien against the employee's recovery, to the  
17 extent of benefits paid or services provided, for the effects of the  
18 industrial injury or illness, by a health care provider, a health care  
19 service plan, a group disability policy or a self-insured employee  
20 welfare benefit plan, subject to the provisions described in  
21 subdivision (b).

22 (2) If the appeals board issues an award finding that an injury  
23 or illness arises out of and in the course of employment, and makes  
24 an award for reimbursement for self-procured medical costs, the  
25 appeals board shall allow a lien, to the extent of benefits paid or  
26 services provided, for the effects of the industrial injury or illness,  
27 by a health care provider, a health care service plan, a group  
28 disability policy or a self-insured employee welfare benefit plan,  
29 subject to the provisions of subdivision (b). For purposes of this  
30 paragraph, benefits paid or services provided by a self-insured  
31 employee welfare benefit plan shall be determined notwithstanding  
32 the official medical fee schedule adopted pursuant to Section  
33 5307.1.

34 (3) (A) If the appeals board issues an award finding that an  
35 injury or illness arises out of and in the course of employment and  
36 makes an award for temporary disability indemnity, the appeals  
37 board shall allow a lien as living expense under Section 4903, for  
38 benefits paid by a group disability policy providing loss-of-time  
39 benefits and for loss-of-time benefits paid by a self-insured  
40 employee welfare benefit plan. The lien shall be allowed to the

1 extent that benefits have been paid for the same day or days for  
2 which temporary disability indemnity is awarded and shall not  
3 exceed the award for temporary disability indemnity. A lien shall  
4 not be allowed hereunder unless the group disability policy or  
5 self-insured employee welfare benefit plan provides for reduction,  
6 exclusion, or coordination of loss-of-time benefits on account of  
7 workers' compensation benefits.

8 (B) For purposes of this paragraph, "self-insured employee  
9 welfare benefit plan" means any plan, fund, or program that is  
10 established or maintained by an employer or by an employee  
11 organization, or by both, to the extent that the plan, fund, or  
12 program was established or is maintained for the purpose of  
13 providing for its participants or their beneficiaries, other than  
14 through the purchase of insurance, either of the following:

- 15 (i) Medical, surgical, or hospital care or benefits.  
16 (ii) Monetary or other benefits in the event of sickness, accident,  
17 disability, death, or unemployment.

18 (4) If the parties propose that the case be disposed of by way  
19 of a compromise and release agreement, in the event the lien  
20 claimant, other than a health care provider, does not agree to the  
21 amount allocated to it, then the appeals board shall determine the  
22 potential recovery and reduce the amount of the lien in the ratio  
23 of the applicant's recovery to the potential recovery in full  
24 satisfaction of its lien claim.

25 (b) Notwithstanding subdivision (a), payment or reimbursement  
26 shall not be allowed, whether payable by the employer or payable  
27 as a lien against the employee's recovery, for any expense incurred  
28 as provided by Article 2 (commencing with Section 4600) of  
29 Chapter 2 of Part 2, nor shall the employee have any liability for  
30 the expense, if at the time the expense was incurred the provider  
31 either knew or in the exercise of reasonable diligence should have  
32 known that the condition being treated was caused by the  
33 employee's present or prior employment, unless at the time the  
34 expense was incurred at least one of the following conditions was  
35 ~~met:~~ *satisfied*:

36 (1) The expense was incurred for services authorized by the  
37 employer.

38 (2) The expense was incurred for services furnished while the  
39 employer failed or refused to furnish treatment as required by  
40 subdivision (c) of Section 5402.

(3) The expense was necessarily incurred for an emergency medical condition, as defined by subdivision (b) of Section 1317.1 of the Health and Safety Code.

*(c) For claims of occupational disease or cumulative injury filed on or after January 1, 2018, the employer shall not be liable for the payment of any lien for medical treatment unless one of the provisions of subdivision (i) of Section 4600 is satisfied or the parties agree to a settlement by compromise and release which complies with subdivision (d) of Section 5005.*

~~(e)~~

*(d) The changes made to this section by Senate Bill 457 of the 2011–12 Regular Session do not modify in any way the rights or obligations of the following:*

*(1) Any health care provider to file and prosecute a lien pursuant to subdivision (b) of Section 4903.*

*(2) A payer to conduct utilization review pursuant to Section 4610.*

*(3) Any party in complying with the requirements under Section 4903.*

SEC. 3. Section 5005 of the Labor Code is amended to read:

5005. *(a) In any case involving a claim of occupational disease or cumulative injury, as set forth in Section 5500.5, the employee and any employer, or any insurance carrier for any employer, may enter into a compromise and release agreement settling either all or any part of the employee's claim, including a part of his claim against any employer. Such A compromise and release agreement, upon approval by the appeals board or a referee, shall be a total release as to such the employer or insurance carrier for the portion or portions of the claim released, but shall not constitute a bar to a recovery from any one or all of the remaining employers or insurance carriers for the periods of exposure not so released.*

~~In~~

*(b) In any case where a compromise and release agreement of a portion of a claim has been made and approved, the employee may elect to proceed as provided in Section 5500.5 against any one or more of the remaining employers, or against an employer for that portion of his exposure not so released; released, and in any such proceeding after election following compromise and release, that portion of liability attributable to the portion or portions of the exposure so released shall be assessed and deducted*



1 from the liability of the remaining defendant or ~~defendants, but~~  
2 ~~any such defendants.~~ The defendant shall *not* receive ~~no~~ credit for  
3 any moneys paid by way of compromise and release in excess of  
4 the liability actually assessed against the released employments  
5 and the employee shall not receive any further benefits from the  
6 released employments for any liability assessed to them above  
7 what was paid by way of compromise and release.

8 ~~In~~

9 (c) *In* approving a compromise and release agreement under  
10 this section, the appeals board or referee shall determine the  
11 adequacy of the compromise and release agreement as it shall then  
12 reflect the potential liability of the released exposure after  
13 apportionment, but need not make a final actual determination of  
14 the potential liability of the employer or employers for that portion  
15 of the exposure being released.

16 (d) *For claims of occupational disease or cumulative injury*  
17 *filed on or after January 1, 2018, the employer shall not be liable*  
18 *for the payment of any lien for medical treatment unless one of the*  
19 *provisions of subdivision (i) of Section 4600 is met or the amount*  
20 *of the compromise and release, exclusive of the cost of past and*  
21 *future medical treatment, is twenty-five thousand dollars (\$25,000)*  
22 *or more.*